

BEFORE THE
Federal Communications Commission
 WASHINGTON, DC 20554

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Petition for Forbearance of)	DA 98-111
the Cellular Telecommunications)	
Industry Association)	

**REPLY COMMENTS OF
 PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo") hereby submits reply comments pursuant to the Commission's Public Notice in the above-referenced proceeding.¹ As discussed herein, the comments submitted in response to the Public Notice demonstrate that the Commission should grant the Cellular Telecommunications Industry Association's Petition for Forbearance ("CTIA Petition") and forbear from enforcing local number portability requirements on CMRS providers. Implementation of wireless number portability at this time would harm consumers by increasing prices and slowing the deployment of competitive wireless networks.

¹ *Public Notice, Wireless Telecommunications Bureau Seeks Comment on CTIA Petition Requesting Forbearance from CMRS Number Portability Requirements*, CC Docket No. 95-116, DA 98-111 (released January 22, 1998) ("Public Notice").

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INTRODUCTION/SUMMARY

PrimeCo, which once believed that wireless number portability ("WNP") could be important, is now convinced the implementation of WNP, at least in the next few years, would be counterproductive and harm the public interest. PrimeCo has changed its position because experience demonstrates that the Commission's objective of promoting CMRS competition is working and WNP will, in the near term, undermine that objective. As Chairman Kennard observed a few weeks ago, "[w]ireless telephone prices are dropping rapidly":

In the nine months from April to December 1997, prices for cellular and PCS services dropped over 12% for low volume customers and over 31% for high volume customers.²

Prices are falling because PCS licensees like PrimeCo are building new networks and providing consumers additional competitive service choices.

The current WNP requirement would reverse this trend by slowing further network buildout and by adding burdensome costs to CMRS operations. In PrimeCo's judgment, it makes no sense to spend money that will increase prices for consumers with an unproven public interest benefit, when the same capital can be used instead to build and expand competitive networks.

Whatever the market conditions that existed at the time the Commission imposed the WNP requirement, the unrefuted fact is that the CMRS market today is intensely and increasingly competitive. WNP will actually retard further CMRS competition because new entrants like PrimeCo will be required to divert limited resources from

² Press Statement of Chairman William E. Kennard on the Second Anniversary of the Telecom Act of 1996 (Jan. 30, 1998).

network buildout to WNP implementation. Further, WNP is not viewed as essential to customers at this time, as surveys and churn data indicate. If and when wireless customers want WNP, market forces will ensure that it is offered — on a voluntary basis by carriers.

Moreover, record evidence coupled with the requirements of Section 10 of the Communications Act now compel the conclusion that the Commission should forbear from enforcing its WNP requirement. Given current market conditions, WNP is “not necessary” either to ensure that CMRS prices are “just and reasonable” or to protect consumers.³ In addition, forbearance “will promote competitive market conditions” because new CMRS entrants would then be able to use their limited capital resources for further network buildout and to reduce their prices — as opposed to increasing their prices to recover the substantial costs of implementing WNP while reducing deployment activities.

Further, the current WNP requirement is at complete odds with the objective of promoting CMRS competition and CMRS-wireline competition. PrimeCo acknowledges that there may be a point sometime in the future when WNP makes sense. That time is not now, however. At the present, a new entrant’s capital is better spent on giving consumers more competitive choices and better quality service, not on increasing prices to recover the costs of government-imposed requirements.

³ 47 U.S.C. § 160(a).

BACKGROUND

In the Telecommunications Act of 1996, Congress decided that landline local exchange carriers, but *not* CMRS providers, should be required to provide local number portability.⁴ Nevertheless, five months later, the Commission ordered broadband CMRS providers to deploy number portability.⁵

In accord with statutory mandates, the Commission has determined that new government regulation should *not* be imposed on the CMRS industry “unless clearly warranted.”⁶ Noting that “all regulation implicates costs,” the Commission has sought to impose new regulatory requirements only when the benefits of regulation exceed the

⁴ See *id.* § 251(b)(2). As a result, there is no basis for MCI’s unsupported assertion that not mandating WNP would be “counter to the goal of the Telecommunications Act.” MCI Comments at 6-7. Even more baseless is WorldCom’s assertion that the “language of the [1996 Act] makes clear that all providers of telecommunications services . . . must themselves implement LNP.” WorldCom Comments at 3. By its terms, Section 251 imposes LNP requirements *only on LECs*, and CMRS providers, in turn, are not to be classified as LECs “except to the extent that the Commission finds that such service should be included in the definition of such term.” The Commission must reject these commenters’ misstatements of the statute.

⁵ *Telephone Number Portability*, CC Docket No. 116, *First Report and Order*, 11 FCC Rcd 8352 (1996), *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997), *appeal pending*, *Bell Atlantic NYNEX Mobile v. FCC*, No. 97-9551 (10th Cir. 1997).

⁶ *CMRS Resale Order*, 11 FCC Rcd 18455, 18463 ¶ 14 (1996); see also *Connecticut CMRS Rate Regulation Order*, 10 FCC Rcd 7025, 7031 ¶ 9 (1995) (new CMRS regulations inappropriate absent “a clear cut need.”); President Clinton, Executive Order 12866 § 1(a) (Sept. 30, 1993) (“Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need . . .”).

costs of regulatory compliance.⁷ Similarly, the Commission has removed existing regulations when their benefits no longer exceed their costs.⁸

Yet, in imposing number portability on CMRS providers, the Commission did not examine the costs the industry would incur in implementing the capability and, consequently, did not weigh whether the benefits of wireless portability exceed their costs. Instead, the Commission imposed a WNP requirement because of its belief that it would “foster increased competition in the CMRS marketplace.”⁹ It reached this conclusion because of its belief that having to change telephone numbers constitutes a “major disincentive to switch carriers.”¹⁰ However, the little available data indicated even then that the absence of WNP was *not* a major disincentive to switch carriers.¹¹

⁷ See *CMRS Resale Order*, 11 FCC Rcd at 18463 ¶ 14.

⁸ See, e.g. *Second CMRS Order*, 9 FCC Rcd 1411, 1478-81 (1994)(determining that CMRS tariffs were no longer necessary); *FCBA Petition, Memorandum Opinion and Order*, FCC 98-18, n.11 (released Feb. 4, 1998)(FCC noting that forbearance would “eliminate a significant and unnecessary expenditure of carrier and Commission resources.”); see also *BOC Forbearance Order*, CC Docket No. 94-1489, DA 98-220, ¶ 95 (Com. Car. Bur. released Feb. 6, 1998)(E911 forbearance would permit carrier to avoid increased costs that would “be passed through to consumers in the form of increased charges.”).

⁹ *Number Portability Order*, 11 FCC Rcd at 8433 ¶ 154.

¹⁰ *Id.* at 8434 ¶ 157.

¹¹ Bell Atlantic forcefully argues there was no record evidence that the absence of number portability was discouraging subscribers from changing CMRS providers. Bell Atlantic at 13-15. In fact, the only record evidence before the Commission *at the time* was that from 13% to 30% of CMRS customers switch carriers each year without number portability. As discussed in PrimeCo’s comments, the current evidence indicates *even more strongly* that the absence of number portability is not a major disincentive to switch carriers. See PrimeCo Comments at 9-10.

The Commission was also of the view that the absence of number portability would “hinder[] the successful entrance of new service providers.”¹² PrimeCo can state with confidence based on its market experience over the past 18 months that the Commission’s prediction was erroneous. PrimeCo has learned from experience in attempting to attract new customers that price and coverage are the important considerations to customers — not number portability. Moreover, WNP would negatively inhibit PrimeCo’s ability to expand its network (thereby providing increased coverage) and would cause PrimeCo to increase prices (to recover WNP implementation costs) rather than to decrease prices. This directly contravenes the purported benefits of WNP and the public interest, and demonstrates the need for forbearance.

DISCUSSION

I. THE COMMISSION MUST EVALUATE ITS WNP POLICY IN THE CONTEXT OF TODAY’S COMPETITIVE CMRS MARKETPLACE

Opponents of CTIA’s petition view the Commission’s 1996 decision, and the public record underlying that decision (developed *in 1995*), as sacrosanct. Representative of this viewpoint is MCI’s statement that “[t]he Commission *long ago determined* that the provision of number portability by CMRS furthers the public interest.”¹³ As the Supreme Court has established, however, “[a]n initial agency interpretation is not instantly carved in stone” and, “[o]n the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy *on a*

¹² *Number Portability Order*, 11 FCC Rcd at 8434 ¶ 157.

¹³ MCI Comments at 3 (emphasis added).

continuing basis."¹⁴ The D.C. Circuit, moreover, has held "that an agency may be forced . . . to institute rulemaking proceedings if a significant factual predicate of a prior decision on the subject (either to promulgate or not to promulgate specific rules) has been removed."¹⁵ In light of the rapid changes in the competitive wireless marketplace, the Commission's WNP rule is a prime example of a policy deserving of a second look.

The record supports PrimeCo's position that the Commission must reevaluate WNP anew, based on the deregulatory statutory framework for CMRS first enacted in 1993 and expanded in 1996.¹⁶ As numerous commenters noted, Congress reaffirmed its deregulatory policy toward CMRS regulation in the 1996 Act, and expressly declined to impose local number portability requirements on CMRS providers.¹⁷

Furthermore, the 1996 Act evinces a Congressional intent that the Commission must continually reevaluate the need for its regulations; not only does Section 10 authorize *carriers* to compel the Commission to review particular regulations, but Section 11 *requires the Commission* to periodically review all of its regulations,

¹⁴ *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 863-64 (1983) (emphasis added); *see also Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 42 (agency not required to "establish rules of conduct to last forever.").

¹⁵ *WWHT, Inc. v. FCC*, 656 F.2d 807, 819 (D.C. Cir. 1981); *see also Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992) ("changes in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy or explain its failure to do so").

¹⁶ *See* PrimeCo Comments at 2-5.

¹⁷ *See, e.g.,* AirTouch Comments at 7; Bell Atlantic Comments at 21-24; SBMS Comments at 2 n.2; United States Cellular Corp. Comments at 5-6.

including the WNP requirement, to confirm that the regulation in question is still necessary.¹⁸ Section 11 further requires the Commission to repeal those regulations which are “no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.”¹⁹ Thus, it is entirely consistent with the intent of the 1996 Act — and required by Sections 10 and 11 — that the Commission undertake a top-to-bottom review of its WNP requirements *independent of* the findings the Commission made based on its 1995 record in this proceeding.²⁰

II. THE RECORD DEMONSTRATES THAT THE CMRS INDUSTRY IS HIGHLY COMPETITIVE

As numerous commenters discussed, there is considerable wireless competition — a fact the Commission has already acknowledged.²¹ The record also demonstrates that the absence of WNP does not in any way prevent consumers from switching wireless service providers.²²

¹⁸ 47 U.S.C. § 161(a). Pursuant to this statutory mandate, the Commission is currently undergoing a biennial review of its regulations.

¹⁹ *Id.* §§ 161(a)(2) and (b).

²⁰ For this reason, the Commission must reject MCI’s contention that CTIA’s forbearance petition amounts to a late-filed petition for reconsideration. *See* MCI Comments at 2-4.

²¹ *See, e.g.,* AirTouch Comments at 5-6; Bell Atlantic Comments at 12; PrimeCo Comments at 6-8; SBMS Comments at 5; *see Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report*, 12 FCC Rcd 11266, 11269-11278 (1997).

²² *See, e.g.,* AirTouch Comments at 8; Bell Atlantic Comments at 13-15; GTE Comments at 7; PrimeCo Comments at 8-9.

Opponents of CTIA's petition ignore these facts, asserting without explanation that WNP will "promote competition."²³ MCI goes one step farther, contending that "the same [competitive market] conditions existed when the Commission decided that wireless carriers should provide [WNP]"²⁴ MCI's assertion is flatly wrong. The Commission adopted WNP rules in July of 1996, significantly before most broadband PCS licensees had commenced the widespread commercial launch of their PCS networks and service. Indeed, and as the record demonstrates, CMRS providers, the Commission, and financial markets all agree the market has become intensely competitive since the Commission adopted its WNP rules.

MCI, moreover, discounts the importance of wireless competition to the instant proceeding, asserting that "the realities of the competitive CMRS market" cited by CTIA and other commenting parties "are really nothing more than . . . 'the demands of a competitive market'" and that CTIA's argument that competition will protect against anticompetitive practices "misses the mark."²⁵ To the contrary, the plain language of Section 10 shows that "the competitive CMRS market" MCI derides has *everything* to do with Section 10 forbearance. Section 10 forbearance is *premised* on the assumption that deregulation will serve pro-competitive and pro-consumer objectives, and that, in a competitive market, burdensome common carrier regulation is unnecessary. Thus, the

²³ See MCI Comments at 6-7; Nextel Comments at 5; Telecommunications Resellers Ass'n (TRA) Comments at 4-5; WorldCom Comments at 6-7.

²⁴ MCI Comments at 3.

²⁵ MCI Comments at 2-3.

record submitted in this proceeding, and the Commission's own recognition of CMRS competitiveness, go to the very heart of Section 10 forbearance.

III. WNP WILL NOT SPUR THE DEVELOPMENT OF WIRELESS-WIRELINE COMPETITION

As PrimeCo discussed in its comments, a wireless carrier's decision to enter the local exchange market will be determined by reviewing market conditions and business opportunities. Indeed, this is entirely consistent with Commission policy. In the 1996 *CMRS Flex* proceeding, shortly after the Commission adopted its WNP requirements, the Commission decided:

In light of the dynamic, evolving nature of the wireless industry, we are concerned that regulatory restrictions on use of the spectrum could impede *carriers* from anticipating *what services customers most need*, and could result in inefficient spectrum use and reduced technological innovation. Allowing service providers to offer all types of fixed, mobile, and hybrid services *in response to market demand* will allow for more flexible responses *to consumer demand*, and greater diversity of services and combinations of services, and increased competition.²⁶

This reflects the Commission's wise decision to reject an "industrial policy" approach to CMRS regulation and to instead allow the *market*, not regulators, to determine the services CMRS providers will offer. The operative term with respect to CMRS regulation has been "customer demand," and customer demand will also be the premise underlying a CMRS provider's decision to directly compete with wireline carriers — WNP will have no bearing on that decision.

²⁶ *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order*, 11 FCC Rcd. 8965, ¶ 22 (1996) (emphasis added).

In any event, implementation of wireless number portability at this time would *undermine the* Commission policy of facilitating competition between CMRS and the telecommunications services offered by landline carriers. Although CMRS providers design their networks to meet the needs of consumers “on the move,” the Commission has hoped that CMRS would become more competitive with the fixed services provided by landline carriers.²⁷ Indeed, the Commission has stated that CMRS/landline competition “would be a major pro-competitive, development in the telecommunications business.”²⁸

There are, however, two primary obstacles to CMRS becoming a substitute for landline services: price and capacity. The overall price for CMRS remains in excess of wireline telephony.²⁹ In addition, CMRS networks do not yet have the capacity to handle sufficient loads to become a competitive threat to landline carriers.³⁰ As the Commission advised Congress last year, “there are a number of trends apparent in the increased use of wireless telephony that may point to the eventual use of wireless

²⁷ The Commission has suggested that CMRS providers might provide “fixed” CMRS as a way to compete with landline carriers. *See Number Portability Order*, 11 FCC Rcd at 8436 ¶ 160. PrimeCo believes this is unlikely in the near term because the demand for mobile services is so strong (although every CMRS provider has unique business plans). Nonetheless, at certain price points and for many consumers, mobile CMRS can be directly competitive with the fixed services offered by landline carriers. Put another way, the provision of fixed CMRS is not necessary for CMRS to become more fully competitive with landline services.

²⁸ *Second Annual CMRS Report to Congress*, 12 FCC Rcd 11266, 11324 n.253 (1997).

²⁹ *Id.* at 11324-11325.

³⁰ *First Annual CMRS Report to Congress*, 10 FCC Rcd 8844, 8870 n.155 (1995).

telephony as not just a supplementary communications tool to traditional wireline telephone service but as a substitute for such service.”³¹ First, CMRS prices are falling and falling rapidly. Second, new and incumbent CMRS providers are expanding the capacity and coverage of their networks to handle increased traffic loads.

The Commission’s view that WNP “will encourage CMRS-wireline competition,” however, represents an unsupported leap of faith.³² While market forces are gradually changing some of these barriers to wireless-wireline competition, they are occurring because of the general absence, to date, of burdensome regulation. WNP would reverse this trend — through regulatory fiat — by diverting capital from expanding network capacity which, in turn, would necessarily push prices upward for all consumers. Even assuming *arguendo* that number portability would be an important consideration in a consumer’s decision to switch from landline service to CMRS (and PrimeCo is not aware of any studies addressing this question), this consideration would not even become relevant unless CMRS were first competitive with landline service on price. This suggests that consideration of a costly WNP requirement should be deferred until, at minimum, the prices for CMRS more closely resemble those charged by landline carriers. PrimeCo submits that market forces — and customer demands — should determine the implementation date for WNP.

³¹ *Second CMRS Report to Congress*, 12 FCC Rcd at 11323.

³² *Number Portability Order*, 11 FCC Rcd at 8437 ¶ 160.

IV. THE RECORD DEMONSTRATES THAT SECTION 10 REQUIRES THE COMMISSION TO FORBEAR FROM ENFORCING WNP

The record in this proceeding demonstrates that WNP forbearance meets the three prongs of Section 10. Opponents of CTIA's petition fail to acknowledge the realities of today's marketplace and the costs of WNP implementation. Indeed, to deny CTIA's Petition in the face of such overwhelming evidence would contravene the deregulatory objectives of Section 10.

A. Competition — Not Regulation — Will Assure Reasonable and Just Rates and Regulations, and Protect Consumers

WNP can withstand scrutiny under Section 10(a)(1) and (2) only if the record demonstrates that its enforcement is *not necessary* to prevent the anticompetitive harms enumerated in Section 10(a)(1) and *is necessary* for the protection of consumers. As PrimeCo discussed in its comments, in light of the pro-competitive, deregulatory objectives of Section 10, burdensome WNP regulations must pass a high threshold to be deemed "necessary" to promote these objectives.³³ Further, contentions that WNP will promote these objectives — particularly where a highly competitive market *already exists* — must be based on more than mere speculation or conclusory statements. Rather, the record must clearly demonstrate a causal relationship between WNP and Section 10(a)(1) and (2) objectives.³⁴ The record demonstrates that these objectives are being met without WNP.

³³ See PrimeCo Comments at 9 n.24.

³⁴ See AirTouch Comments at 7-8; Bell Atlantic Comments at 9-15; PrimeCo Comments at 6-10; SBMS Comments at 3-6.

As a number of parties discussed in their comments, the Commission itself has long determined that competition is the appropriate means of ensuring that CMRS carriers' rates, practices, classifications or regulations are just and reasonable.³⁵ Moreover, as Bell Atlantic notes, there are other regulatory requirements — Sections 201 and 202 — that address these objectives.³⁶ Thus, MCI's assertion that "CTIA has failed to demonstrate that, absent regulatory oversight, CMRS carriers would not engage in unjust or unreasonably discriminatory practices" is simply irrelevant³⁷ — *the Commission itself* has already determined that *competition* provides sufficient protection against such practices "absent regulatory oversight." Moreover, no connection has been demonstrated between mandated WNP and increased competition.

In addition, as demonstrated in Section II above, the record clearly demonstrates that: (1) there is already considerable wireless competition — far more than existed at the time the Commission adopted WNP; and (2) customers routinely and easily switch wireless service providers. Opponents of CTIA's petition conspicuously omit these facts from their comments. MCI, for example, asserts that WNP is "necessary" under Section 10(a)(1) because "[i]f CMRS providers do not deploy number portability, wireless customers will be harmed by being unable, without changing phone

³⁵ See AirTouch Comments at 7; Bell Atlantic Comments at 21-24; PrimeCo Comments at 4-5.

³⁶ Bell Atlantic Comments at 5-6.

³⁷ See MCI Comments at 6; *see also* TRA Comments at 6-7 (Commission cannot conclude that WNP "is unnecessary to ensure that charges are just, reasonable and nondiscriminatory.").

numbers, to freely change wireless service providers.”³⁸ Similarly, TRA states in conclusory fashion that WNP “is needed to advance competition within the CMRS marketplace” and to “enable consumers to switch easily between wireless facilities-based carriers [and] between wireless facilities-based carriers and resellers.”³⁹ The record demonstrates, however, that the absence of WNP is not a barrier to changing service providers, and that consumers do not perceive “harm” when switching service providers.⁴⁰ Again, market considerations — and customer demands — should determine when (and if) WNP is implemented.

In sum, CMRS competition is intense and wide-ranging, and there has been no showing that WNP would meaningfully facilitate additional wireless competition. In the face of this evidence, the Commission cannot reasonably conclude that WNP is “necessary” to meet the objectives of Section 10(a)(1) and (2). Indeed, PrimeCo submits that in light of this compelling record evidence, a Commission determi-

³⁸ MCI Comments at 6. MCI is essentially taking the paternalistic view that the hundreds of thousands of wireless customers freely changing service providers today — without WNP — are being harmed without their knowledge, and that WNP is necessary to somehow protect these customers from their own service choices.

³⁹ TRA Comments at 2.

⁴⁰ PrimeCo Comments at 9-10; *see also* AirTouch Comments at 8; Bell Atlantic Comments at 13-15; SBMS Comments at 5. The Telecommunications Resellers Association cites to a speech given by Chairman Kennard for the proposition that WNP is a “fundamental right” of consumers and, in turn, seeks to elevate the Chairman’s informal statement to an established Commission policy. PrimeCo submits that this is not germane; the issue before the Commission is whether WNP forbearance meets the requirements of Section 10. As discussed above, no local number portability obligation was established in the CMRS context, notwithstanding the Chairman’s remarks.

nation otherwise would raise the question of whether forbearance from enforcing *any* Commission regulation could meet the standards of Section 10(a)(1) and (2).

B. The Record Demonstrates that WNP forbearance is Consistent with the Public Interest

The record demonstrates that WNP forbearance is consistent with the public interest. As PrimeCo and other commenting parties have demonstrated, the purported public interest benefits of WNP have occurred in the absence of WNP or are, at best, highly speculative. Furthermore, the high costs of WNP implementation — which have not been disputed — will *disserve* the public interest by undermining carriers' ability to provide consumers the lower prices and improved service that will result from additional network deployment investment. Forbearance will thus *promote* competition.⁴¹ Thus, on balance, the public interest is not served by WNP and forbearance is clearly consistent with the public interest.

1. Opponents of CTIA's Petition Fail to Acknowledge the Detrimental Impact of WNP Costs on Network Deployment

Opponents of CTIA's Petition contend that a number of pro-competitive and public interest benefits will result from WNP. While opponents do not dispute that WNP will be costly, they apparently believe that the public interest benefits of WNP outweigh such costs. WorldCom goes so far as to contend that CMRS providers' concern for "diverting' their 'limited' or 'finite resources' or 'capital' . . . is not enough to warrant automatic removal of binding regulatory obligations."⁴²

⁴¹ See 47 U.S.C. § 160(b).

⁴² WorldCom Comments at 5.

WorldCom and other opponents of CTIA's petition have misstated the relevant issues before the Commission. The issue is *not* simply that CMRS providers have finite resources, and that expending monies implementing WNP necessarily precludes them from using such resources for network deployment.⁴³ Rather, the record further demonstrates that such costs will also be *so burdensome* that they will also substantially hinder network and service deployment and *undermine* the very pro-competition, pro-consumer and public interest benefits that WNP purportedly would promote. Furthermore, as Bell Atlantic noted in its comments, the Commission has already established that the impact of regulatory costs on carriers constitutes a valid basis for Section 10 forbearance.⁴⁴ WNP cost burdens must therefore be considered in determining whether WNP is consistent with the public interest.

PrimeCo has stated throughout this proceeding that WNP implementation will be very costly, and numerous commenting parties agree. GTE, for example, notes that its capital resources must be used "to pay operating costs, finance investment in network build out, fund advertising campaigns, and finance compliance with regulatory requirements like service number portability."⁴⁵ SBMS also estimates "that the annual cost of querying alone, in order to identify a ported number . . . will be in the tens of

⁴³ Regarding the issue of regulatory costs, PrimeCo has expended over \$1 billion to obtain its broadband PCS licenses and has spent more than an additional \$1 billion in network deployment — which includes various regulatory compliance costs. WorldCom's implication that wireless carriers are citing the competitiveness of their industry as a means of somehow shirking regulatory obligations must be rejected outright.

⁴⁴ See Bell Atlantic Comments at 17-18.

⁴⁵ GTE Comments at 4.

millions of dollars” and that this amount “is a mere fraction of the investment in infrastructure that will be required to implement the ability to port numbers.”⁴⁶ Sprint Spectrum has reached a similar conclusion.⁴⁷ AirTouch Communications estimates that it will incur costs of between \$55 to \$75 million over the next five years.⁴⁸ Also, Upstate Cellular estimates it will need to spend between \$2 to \$3 million to implement WNP.⁴⁹ PrimeCo’s preliminary cost estimates are consistent with the projections offered by these parties and confirm that significant hardware and software modifications will be required. Again, this investment is better spent on deployment activities which will *further* competitive wireless services.

2. Contentions that WNP Is Necessary to Conserve Numbering Resources are Unfounded

PageNet expresses concern that without WNP, the Commission’s efforts to efficiently and fairly administer numbering will be undermined.⁵⁰ Similarly, WorldCom asserts that “[n]umber pooling among wireline carriers will be implemented soon after LNP becomes a reality” but that without timely implementation “consumers and users of telephone numbers as well as all carriers themselves will suffer because of

⁴⁶ SBMS Comments at 8. As the Commission is aware, wireline carriers continue to encounter difficulties in implementing local number portability. *See e.g., Public Notice, Common Carrier Bureau Seeks Comments on Petitions for Extension of Time of the Local Number Portability Phase I Implementation Deadline*, CC Docket No. 95-116, DA 98-451 (Com. Car. Bur. released March 5, 1998).

⁴⁷ Sprint Comments at 1-2.

⁴⁸ AirTouch Comments at 2.

⁴⁹ Upstate Cellular Comments at 2.

⁵⁰ *See, e.g.,* Paging Network, Inc.


the lack of competition and the lack of numbers."⁵¹ As PrimeCo discussed in its comments, however, wireless carriers already are efficient users of the numbering resource, and issues relating to numbering administration are being addressed separate from the instant proceeding.⁵² Problems with number exhaust will not be resolved by the imposition of WNP, and wireless carriers are not contributing to the problem.⁵³

CONCLUSION

For the reasons discussed above, and in supporting comments, the Commission should grant CTIA's petition and forbear from enforcing local number portability requirements on CMRS providers at this time.

Respectfully submitted,

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⁵¹ WorldCom Comments at 7.

⁵² See PrimeCo Comments at 15-16.

⁵³ We also note that PageNet's claim that WNP (and number pooling) will avoid 10 digit dialing will not always be the case. In some cases, 10 digit dialing will already be mandatory in area code overlay situations.